

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THERESA BROOKE,
Plaintiff,

v.

INDEPENDENCE MENLO HOTEL
OWNER LLC,
Defendant.

Case No. 19-cv-06689-VKD

**ORDER TO SHOW CAUSE WHY
ACTION SHOULD NOT BE
DISMISSED**

Plaintiff Theresa Brooke filed this action on October 18, 2019. Dkt. No. 1. Pursuant to the initial case management scheduling order and General Order 56, Ms. Brooke's last day to complete service on defendant Independence Menlo Hotel Owner LLC ("Independence Menlo") or to file a motion for administrative relief from the service deadline was December 17, 2019. Dkt. No. 4. A review of the docket shows that Ms. Brooke filed a returned summons showing service upon an Albert Damonte for C T Corporation System, Inc. on October 23, 2019. Dkt. No. 7. However, the Clerk's Office declined to enter default as Ms. Brooke requested because the party served was not the same as the party listed on the summons. Dkt. Nos. 8, 9. Ms. Brooke has taken no further action in this matter, and it does not appear that Independence Menlo has waived service of summons.


Additionally, as a reminder, all named parties must consent to magistrate judge jurisdiction before a magistrate judge may hear and decide a case. 28 U.S.C. § 636(c)(1); *Williams v. King*, 875 F.3d 500 (9th Cir. 2017). The Court has issued notices regarding the assignment of this matter to a magistrate judge, the most recent of which sets a **January 16, 2020** deadline for filing a consent or declination. Dkt. No. 11. By that date, plaintiff shall file either a consent or

1 declination to proceed before a magistrate judge. The consent/declination form is available on the
2 Northern District of California's website, [https://cand.uscourts.gov/filelibrary/1335/MJ_Consent-](https://cand.uscourts.gov/filelibrary/1335/MJ_Consent-Declination_Form_Jan2014.pdf)
3 [Declination_Form_Jan2014.pdf](https://cand.uscourts.gov/filelibrary/1335/MJ_Consent-Declination_Form_Jan2014.pdf). Parties are free to withhold consent without adverse substantive
4 consequences. Fed. R. Civ. P. 73(b)(2).

5 Accordingly, Ms. Brooke shall appear before this Court on **January 21, 2020 at 10:00**
6 **a.m.** in Courtroom 2, Fifth Floor, 280 South First Street, San Jose, California 95113 and show
7 cause why this action should not be dismissed without prejudice for failure to timely complete
8 service of process and for failure to prosecute. If Ms. Brooke contests dismissal, she shall file a
9 response to this order no later than **January 16, 2020** explaining why the action should not be
10 dismissed.

11 **IT IS SO ORDERED.**

12 Dated: January 3, 2020

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15 VIRGINIA K. DEMARCHI
16 United States Magistrate Judge
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